

शुद्धिपत्र

दिनांक 8 जुलाई, 1986

सं. ओ.वि./एफ.डी./100-85/23429—हरियाणा सरकार के अधिसूचना संख्या ओ.वि./एफ.डी./100-85/37167, दिनांक 10 सितम्बर, 1985 जो कि हरियाणा गज्य पत्रिका, दिनांक 22 अक्टूबर, 1985 पृष्ठ 2690 पर छपा है में मान्द “क्या श्री सुरजीत मोहन की सेवाओं का समापन न्यायीचित् तथा ठीक है? यदि नहीं, तो वह किस राहत का हकदार है?” के स्थान पर शब्द “क्या श्री सुरजीत मोहन की सेवा समाप्त की गई है या उसने स्वयं गैर हाजिर होकर नौकरी से पूर्णग्रहणिकार (लीयन) खोया है? इस बिन्दु पर निर्णय के फलस्वरूप वह किस राहत का हकदार है?” पुढ़ा जाये।

जे. पी. रतन,

उप सचिव, हरियाणा सरकार,
श्रम विभाग।

LABOUR DEPARTMENT

The 16th June, 1986.

No. 9/7/86-Lab./4437.—In pursuance of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of the (i) Transport Commissioner, Haryana Chandigarh, (ii) Haryana Roadways, Hissar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 76 of 85

between

SHRI DHARAM PAL, WORKMAN AND THE MANAGEMENT OF (i) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH, (ii) HARYANA ROADWAYS, HISSAR.

Shri T. C. Gupta, A. R. for the workman.

Shri Jagbir Singh, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute, between the workman Shri Dharam Pal and the management of (1) Transport Commissioner, Haryana Chandigarh, (2) Haryana Roadways, Hissar, to this court, for adjudication,—vide

Haryana Government Gazette Notification No. 21663-68 dated 17th May, 1985:—

Whether the termination of services of Shri Dharam Pal is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was employed with the respondent as a conductor for the last about 8½ years and the respondent choose to terminate his services on the basis of trumped up charges, regarding which, a farce of an enquiry was held, in which, he was not given an opportunity of complete participation and as such, the alleged enquiry against him is not legal and proper and resultantly the order of termination passed on the basis of the same is illegal and unlawful. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that since the services of the petitioner were terminated after a legal and valid enquiry, so the order of termination was proper. On merits, it has controverted the various allegations made in the claim statement. It is asserted that the petitioner was given full opportunity of participation in the enquiry proceedings.

4. On the pleadings of the parties the following issues were framed by me on 3rd October, 1985:—

1. Whether a valid and proper domestic enquiry was held by the respondent before terminating the services of the workman?

2. Whether the termination of services of Shri Dharam Pal is justified and in order ? If not, to what relief is he entitled?

5. I further directed that issue No. 1 regarding domestic enquiry shall be tried as preliminary issue. At the fag end of the trial the learned Authorised Representative of the respondent made a statement that since the respondent has already adduced evidence on all the issues, it shall not avail any opportunity to lead any further evidence, in case, issue regarding domestic enquiry is answered against the respondent. The respondent examined MW-1 Shri Randhir Singh Inspector, MW-2 Shri Chhattar Singh Store Purchase Officer and MW-3 Shri Mahavir Singh Inspector. The petitioner appeared as his own witness as WW-1.

6. Authorised Representatives of the parties heard.

Issue No. 1

7. The procedure adopted by the Enquiry Officer in this case is unheard of in the annals of judicial history. First of all the Enquiry Officer recorded the statements of two

Inspectors Sarvshi Bharat Bhushan and Randhir Singh simultaneously. The petitioner was not given an opportunity to cross examine them. No such opportunity could be afforded, because a combined statement of these two witnesses were recorded by the Enquiry Officer. Thereafter the Enquiry Officer choose to record the statement of the petitioner and after that the petitioner was given an opportunity to cross examine the witnesses of the management but it is not on record as to which of the witnesses Sarvshri Bharat Bhushan or Randhir Singh answered the quaries allegedly put by the petitioner. The learned Authorised Representative of the respondent Shri Jagbir Singh could not support the procedure adopted by the Enquiry Officer, though he faintly contended that usually the Enquiry Officer conducting domestic probes are laymen not well versed in procedural laws and furthermore sophisticated rules of evidence are not applicable to enquiry proceedings. Be that it may be so, the Enquiry Officer has to conduct the enquiry within four parameters of the principles of natural justice which have been complied by the Enquiry Officer more in flagrant disregard than in compliance. Under these circumstances, I have no difficulty in holding that the enquiry held in

this case was not valid and proper. The procedure adopted by the Enquiry Officer was absolutely irregular and in conducting the same the Enquiry Officer hardly afforded any opportunity of participation to the petitioner. So, the enquiry recorded in this case cannot be sustained and as such, this issue is answered against the respondent.

8. The issue regarding domestic enquiry has been answered against the respondent and so the basis of the order of termination passed against the petitioner stands knocked out. The learned Authorised Representative of the respondent Shri Singh contended that reinstatement of the petitioner should not be ordered since the petitioner himself owned his mis-conduct at the time of personal hearing before the General Manager. In my opinion, this alleged admission of the petitioner cannot go against him and prove the allegations against the petitioner regarding which, no proper probe was held by the respondent. Under these circumstances, order of termination cannot be sustained being unlawful and illegal and as such, the same is set aside. This delay of about three years in raising demand notice, there is no explanation on behalf of the petitioner as to why he could not raise the same immediately after his termination. The demand notice is dated

13th June, 1984. His date of termination is 18th June, 1981. Under these circumstances, full back wages cannot be awarded to the petitioner. So, taken into consideration the unexplained delay on the part of the petitioner in not raising the demand notice expeditiously. I order for reinstatement with continuity of service and 25 per cent back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated. 23rd April, 1986.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endorment No. 76-85/692, dated 8th May, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

KULWANT SINGH,

Secretary to Government, Haryana,
Labour and Employment Department.